



STATE OF ARIZONA

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SEXUAL ASSAULT FORENSIC EXAM FREQUENTLY ASKED QUESTIONS FOR ARIZONA

In January 2006 President Bush signed the Violence Against Women Reauthorization Act of 2005 (VAWA 2005). The new language in VAWA 2005 has a number of provisions that enhance or expand services for victims of domestic violence, sexual assault and stalking. This FAQ highlights one of the amendments in this law pertaining to a new certification requirement for the STOP Violence Against Women Formula grant (STOP). VAWA 2005 is requiring that each state address the new requirement in a means that works best for them.

WHAT IS BEING ASKED OF ALL STATES INCLUDING ARIZONA?

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), 42 U.S.C. § 3796gg-4(d), contains a new provision which states:

Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

All states are being asked to provide sexual assault forensic examinations (SAFE) to sexual assault victims who request them even if they do not want to report the crime. In other words, a SAFE exam cannot have an authorization process or approval by the criminal justice system before it is performed.

WHEN DOES THIS NEW FEDERAL LAW TAKE EFFECT?

States must comply with this change by January 5, 2009.

WHAT ARE THE CONSEQUENCES IN ARIZONA IF WE DO NOT COMPLY WITH THIS NEW FEDERAL LAW?

Arizona will not be eligible for STOP Violence Against Women funding. The Governor's Office for Children, Youth and Families (GOCYF) distributes STOP money statewide to support courts, law enforcement, prosecutors and victim service providers addressing domestic violence, sexual assault and stalking. In 2007 GOCYF distributed approximately \$2 million to support 26 projects that provided for 46 full-time staff positions, educated 3,592 people and provided victim services to 6,337 individuals in 9 counties.

WHICH SEXUAL ASSAULT VICTIMS DOES THIS LAW APPLY TO?

The SAFE requirements apply to any sexual assault victim age 13 years or older who requests a forensic medical exam. It does not matter where the assault occurred, the exam must be provided based on the request.

WHAT ABOUT DUTY TO REPORT CHILD ABUSE OR HEALTHCARE PROVIDERS' MANDATORY REPORTING LAWS?

The new federal SAFE requirement is **not** in conflict with duty to report or mandatory reporting laws.

Individuals who are mandated reporters of child abuse and neglect under A.R.S. § 13-3620 are still required to report the abuse to Child Protective Services (CPS) or Law Enforcement. CPS is not considered a criminal justice entity so the new federal law does not apply to them. In addition, CPS will still be bound to their duty to report to Law Enforcement when appropriate.

If a healthcare provider feels they have a duty to notify law enforcement about an individual seeking care, under A.R.S. § 13-3806, then this law does not prohibit them from making the report.

FOR THE PURPOSE OF THIS NEW LAW, WHAT IS A FORENSIC MEDICAL EXAM?

According to the United States Department of Justice, Office on Violence Against Women's (OVW) November 2007 FAQ, the term "forensic medical exam" is defined as . . . *an examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law.*

The examination should include at a minimum:

- 1) examination of physical trauma;*
- 2) determination of penetration or force;*
- 3) patient interview; and*
- 4) collection and evaluation of evidence.*

WHO IS GOING TO PAY FOR THE EXAMS?

A.R.S. § 13-1414 states:

Any medical expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-604.01 or a sexual assault shall be paid by the county in which the offense occurred.

The exam must be provided free of charge and the victim cannot incur any cost for the SAFE.

CAN I USE STOP GRANT FUNDING TO COMPLY WITH THE SAFE REQUIREMENT?

Currently STOP funds are permitted to pay for the following activities:

- training for SANE/SAFE personnel
- expert testimony of SANE/SAFE personnel
- forensic evidence collection kits ("rape kits")
- equipment, such as colposcopes, swab dryers, and lights
- outreach efforts to inform victims about available services
- victim advocate personnel to accompany victims through the forensic examination process
- on-going counseling services for victims
- on-call time of the SANE/SAFE personnel

In addition to this new requirement, VAWA 2005 allows states to use STOP Violence Against Women Formula grants to pay for additional costs of a SAFE, most importantly the cost of the health care provider's time conducting the exam. According to the OVW 2007 FAQ, to use STOP funding for this purpose there are two requirements which apply to the whole state, not just STOP subgrantees:

- 1) *the examinations are performed by specially trained examiner for victims of sexual assault (such as Sexual Assault Nurse Examiners (SANEs) or Sexual Assault Forensic Examiners (SAFEs); and*
- 2) *the jurisdiction does not require victims of sexual assault to seek reimbursement from their insurance carriers.*

HOW LONG ARE WE REQUIRED TO KEEP THE EXAMS?

VAWA 2005 does not set a time limit or minimum for storage or retention of the SAFE aka "rape kits."

Under state law (A.R.S. § 13-4221) preservation of biological evidence of unresolved or "cold cases" for 55 years is only required when the case has been reported to law enforcement.

WHERE ARE THE COMPLETED KITS GOING TO BE STORED?

Counties must determine where the kits will be stored. It is important that these kits maintain the proper chain of custody, acceptable to law enforcement and the prosecutor.

For additional information, technical assistance or clarification about this FAQ please contact Leah Meyers, Program Administrator at the Governor's Office for Children, Youth and Families 602-542-1764 or lmeyers@az.gov. To view the documents cited in this FAQ please visit the Maryland Coalition Against Sexual Assault's (MCASA) website www.mcasa.org/C/4/C4.htm. MCASA is the national technical assistance provider to help states address this new requirement.